

Special Needs Planning

Power of third-party special needs trust to provide for disabled individuals.



One of the most powerful planning tools available to caregivers of an individual with a disability is the Special (aka Supplemental) Needs Trust (SNT). An SNT can help to ensure the individual continues to qualify for available government benefits while at the same time providing additional supplemental resources to allow him/her to have the quality of life which the caregiver envisions. The multitude of items that can be provided for by the SNT can help create the freedom, opportunities and options that caregivers, families and friends wish to provide their loved one both during their lifetimes and after their death.

What is a 3rd-party SNT?

There are two primary types of SNTs, 1st party and 3rd party. A 1st-party SNT is a trust for the benefit of an individual with a disability that is funded with his/her personal assets. Whereas a 3rd-party SNT is also created for the benefit of an individual with a disability, it is funded with assets owned by anyone other than the trust beneficiary.

Both types allow for an individual with a disability to have his/her additional needs met (i.e., needs not being provided for through government benefit programs), while maintaining their eligibility for those programs. However, a key difference is that

upon the death of the individual with a disability, the remaining assets of a 3rd-party SNT will typically not be subject to any reimbursement claims by the government. A 3rd-party SNT can be created in a couple of ways:

1. During the lifetime of the grantor as an irrevocable trust or a revocable trust; or,
2. At the grantor's death via a testamentary trust created in a will/revocable living trust.

Each type of 3rd-party SNT can accomplish the grantor's objective of caring for their loved one with a disability, however, creating a third-party SNT during the grantor's lifetime can provide other family

members, friends, and caregivers with a vehicle to facilitate gifts or bequests for the individual. This reduces the risk that assets will be inadvertently transferred to the individual with a disability outright, which could jeopardize his/her access to government benefits.

Additionally, creating an irrevocable trust during the grantor's lifetime also provides the grantor a mechanism to help support the individual in an estate tax efficient manner (since assets transferred to the trust are generally removed from the grantor's taxable estate).

Distributions from a 3rd-party SNT

The provisions of the 3rd-party SNT are typically focused on only allowing for trust assets to be used to supplement the care and support of the individual with a disability in ways that are not provided for by government benefits (though there may be situations in the beneficiary's life where exceptions should be made). In fact, if certain distributions are made either directly to the individual with a disability or paid on his/her behalf in order to provide food or shelter, then the individual's government benefits may be reduced or lost. While a 3rd-party SNT should not provide direct distributions or pay for the individual's food or shelter, they always can provide for things like education, recreation, counseling, and medical attention beyond the simple necessities of life. For example, the 3rd-party SNT can cover a wide array of every day expenditures, including the following:

- Medical/dental expenses/equipment not covered (e.g., wheelchair).
- Over-the-counter medications (including vitamins or herbal supplements).



- Non-food grocery items (e.g., laundry detergent, fabric softener, deodorant, soap, personal hygiene products, paper towels, toilet paper, etc.).
- Therapy or rehabilitation services.
- Training and education (academic or recreational/hobby).
- Travel/vacation, which can include the cost of a companion (SNT cannot pay for food).
- Recreation and entertainment (summer camp, museums, zoo, movies or social events, videos, sports/fitness equipment, gym membership, music lessons).
- Electronic equipment (computer, TV, DVD, camera) and services (cable, internet, phone).
- Appliances (washer, dryer, microwave, refrigerator) and furniture.
- Legal, accounting, or guardianship expenses.
- Insurance (auto/home).
- Burial expenses.
- Pets/pet supplies.
- Transportation (a car, specially equipped van, a ride share membership, a bus/rail pass, gasoline, oil change, car maintenance).
- Help with starting a business.
- Home services (alarm system, cleaning, landscaping, maintenance).
- Dry cleaning/laundry services.

Using a 3rd-party SNT to purchase a home

In addition to the many benefits that an SNT can be used to provide, a 3rd-party SNT may also be used to purchase a home for an individual with a disability. Buying a home through an SNT provides additional protection against creditors and allows for increased flexibility when selling the property (i.e., the

proceeds would not have to be used to purchase a new home to prevent them from counting as assets of the individual for benefits eligibility).

A major benefit of an SNT owning a house is that the beneficiary may be able to live in the house rent-free without affecting his/her Supplemental Security Income (SSI) payment. However, if the trust pays certain other expenses (electricity, heat, or water), the amounts are considered in-kind support and maintenance (ISM), and SSI is reduced dollar-for-dollar, up to \$284.66 per month (in 2021). If the trust were making mortgage payments on the house, those payments would result in an SSI reduction up to \$284.66 per month.

Of course, there are multiple factors that should be considered in deciding if this is an economical use of trust funds:

- Is the home itself appropriate for the beneficiary given his or her disability?
- Will housing costs consume a large part of the SNT resources?
- Will the beneficiary want/need to live in a different area in the future?

Using a 3rd-party SNT to contribute to an ABLE account

Another powerful use of the 3rd-party SNT could be the use of trust funds to make contributions to an ABLE account. The ABLE account was created in 2014 and allows annual contributions of up to \$15,000 into the account. As long as the account total does not exceed \$100,000 and the funds are used for disability related expenses, the account holder's eligibility for many means-tested public benefits is not affected by the ABLE account.

One significant advantage of an ABLE account is the ability to use funds contributed to the account to pay for housing (rent, mortgage, property taxes, etc.) and household operating expenses (gas, electricity, water, sewer, garbage, etc.) without resulting in an SSI reduction.

If the payment for housing comes from the 3rd-party SNT, instead of the ABLE account, it would be considered ISM and will lower the individual's monthly SSI payments. However, if the 3rd-party SNT made those same distributions to the

individual's ABLE account, the money could be used to pay for housing expenses with no reduction to SSI.

In order to ensure the trustee has the ability to make distributions from the 3rd-party SNT to the ABLE account, the SNT grantor should explore including provisions in his/her trust that grants the trustee this power.

Overall, the 3rd-party SNT can provide benefits to an individual with disabilities in numerous ways depending upon his/her needs, abilities, and resources. As always it is important to remember that the rules are very complicated, and you should consult with an attorney experienced in planning for individuals with disabilities in order to determine what is best.

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